

Officer History

Officer Name: Gerber, Douglas

Tax ID: [REDACTED]

Sex: [REDACTED]

Shield: 17062

Race: [REDACTED]

Rank: POM

Command: 412

DOB: [REDACTED]

Appt Date: 01/07/2015

Age: [REDACTED]

Tenure: 5

CCRB #	Report Date	Incident Date	Allegation	Disposition	NYPD Disposition	NYPD Penalty	Command
201508988	10/21/2015	10/14/2015	Force - Physical force	Exonerated			023
	10/21/2015	10/14/2015	Discourtesy - Word	Exonerated			023
201602797	04/04/2016	03/30/2016	Discourtesy - Word	Complainant Uncooperative			023
	04/04/2016	03/30/2016	Abuse - Threat of force (verbal or physical)	Complainant Uncooperative			023
201705352	07/03/2017	07/01/2017	Force - Physical force	Unsubstantiated			023
	07/03/2017	07/01/2017	Abuse - Retaliatory summons	Substantiated (Charges)			023
201710128	12/06/2017	11/30/2017		Mediation Attempted			023
	12/06/2017	11/30/2017		Mediation Attempted			023
	12/06/2017	11/30/2017		Mediation Attempted			023
	12/06/2017	11/30/2017		Mediation Attempted			023
	12/06/2017	11/30/2017		Mediation Attempted			023
201805345	07/03/2018	07/03/2018	Abuse - Threat of arrest	Complainant Uncooperative			410
	07/03/2018	07/03/2018	Discourtesy - Word	Complainant Uncooperative			410
	07/03/2018	07/03/2018	Abuse - Vehicle stop	Complainant Uncooperative			410

Total Charges = 14

Total Cases = 5

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Perri Fagin	Team: APU	CCRB Case #: 201705352	<input checked="" type="checkbox"/> Force <input type="checkbox"/> Discourt. <input type="checkbox"/> U.S. <input checked="" type="checkbox"/> Abuse <input type="checkbox"/> O.L. <input type="checkbox"/> Injury
Incident Date(s) Sat, 07/01/2017 4:40 AM	Location of Incident: In front of [REDACTED]	Precinct: 23	S.O.L. Expires: 01/01/2019
Date/Time CV Reported Mon, 07/03/2017 11:21 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 07/03/2017 11:21 AM

Complainant/Victim	Type	Home Address
1. V [REDACTED]	Comp/Victim	[REDACTED]

Witness(es)	Home Address
1. [REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Douglas Gerber	[REDACTED]	[REDACTED]	023 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Jorge Ortiz	[REDACTED]	[REDACTED]	023 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM Douglas Gerber	Force: Police Officer Douglas Gerber used physical force against [REDACTED]	A . Unsubstantiated
B . POM Douglas Gerber	Abuse of Authority: Police Officer Douglas Gerber issued a summons to [REDACTED]	B . Substantiated

Case Summary

On July 3, 2017, [REDACTED] called the CCRB to file this complaint.

On July 1, 2017, at approximately 4:40 a.m., Mr. J [REDACTED] was sitting on a tree guardrail with [REDACTED] C [REDACTED] outside of his building, located at [REDACTED] [REDACTED] in Manhattan. Police Officers Douglas Gerber and Jorge Ortiz of the 23rd Precinct were on patrol when they noticed Mr. J [REDACTED] who was seated next to an open can of beer. PO Gerber decided to initiate a stop and he and PO Ortiz approached him (see allegations not pleaded). While PO Gerber was writing Mr. J [REDACTED] summons, Mr. J [REDACTED] stood up and allegedly refused to sit back down. PO Gerber grabbed Mr. J [REDACTED] by his shirt and allegedly tripped Mr. J [REDACTED], causing him to fall to the ground (**Allegation A**). PO Gerber issued Mr. J [REDACTED] a summons for an open container before leaving with PO Ortiz (**Allegation B**).

There was no available video footage of this incident.

An attorney was consulted regarding this case. This case was delayed due to obtaining additional information from Mr. J [REDACTED] pursuant to the consultation.

Mediation, Civil and Criminal Histories

- Mr. J [REDACTED] declined to mediate this complaint as he felt the officer would be unreasonable.
- According to the Office of Court Administration (OCA), between March 19, 2001 and September 15, 2017, Mr. J [REDACTED] pled guilty to harassment (once), trespassing (once), and disorderly conduct (once). He received varying amounts of imprisonment and conditional discharges (Board Review 01).
- On October 23, 2017, Mr. J [REDACTED] was called and confirmed that his court date regarding this summons is scheduled for December 4, 2017, and he intends to fight the summons (Board Review 12).
- As of August 31, 2017, Mr. J [REDACTED] has not filed a Notice of Claim with the Office of the New York City Comptroller (Board Review 02).

Civilian and Officer CCRB Histories

- This is Mr. J [REDACTED] first CCRB complaint (Board Review 10).
- PO Gerber, who has been a member-of-service for two years, has two prior CCRB complaints filed against him involving four total allegations. In case 201508988, PO Gerber had an allegation of force against him which the Board exonerated.

Findings and Recommendations

Allegations not pleaded

- PO Gerber stopped Mr. J [REDACTED] in order to issue him a summons for an open container. The stop allegation is therefore subsumed into Allegation B.
- Mr. C [REDACTED] alleged that PO Gerber told Mr. J [REDACTED] he could be arrested for disorderly conduct; however, Mr. J [REDACTED] did not make this allegation on his own behalf. Therefore, a threat of arrest is not pleaded.

Allegation A – Force: Police Officer Douglas Gerber used physical force against [REDACTED]

J [REDACTED]
It is undisputed that Mr. J [REDACTED] stood up while PO Gerber was issuing him a summons, and that PO Gerber told Mr. J [REDACTED] to sit down. It is further undisputed that PO Gerber grabbed Mr. J [REDACTED] and Mr. J [REDACTED] ended up on the ground. What is in dispute is how Mr. J [REDACTED] ended up on the ground.

Mr. J [REDACTED] testified that he began to stand up while being issued the summons, and PO Gerber asked him who gave him permission to stand. Mr. J [REDACTED] questioned why he needed permission while he stood up fully. PO Gerber grabbed Mr. J [REDACTED] shirt and pulled Mr. J [REDACTED] toward him. PO Gerber placed his foot behind Mr. J [REDACTED] and pushed Mr. J [REDACTED] backward, tripping him and causing him to fall onto the ground. PO Gerber fell on top of Mr. J [REDACTED]. As a result, Mr. J [REDACTED] complained of bruising and swelling to his left knee and thigh. During his in-person statement, photos were taken of these sustained injuries, and he used a cane to ambulate (Board Review 03) (Board Review 04).

Mr. C [REDACTED] corroborated Mr. J [REDACTED] testimony that after Mr. J [REDACTED] asked why he needed to sit down, PO Gerber grabbed Mr. J [REDACTED] tripped him to the ground, and fell on top of him (Board Review 05).

PO Gerber testified that Mr. J [REDACTED] stood up, asked why he was receiving a summons, and began to approach PO Gerber. PO Gerber issued Mr. J [REDACTED] eight to nine verbal orders to sit down, but Mr. J [REDACTED] continued his approach. PO Gerber grabbed Mr. J [REDACTED] by his shirt and pushed him backward multiple times, while repeating that Mr. J [REDACTED] needed to sit down. Mr. J [REDACTED] fell backward and PO Gerber maintained his grip on Mr. J [REDACTED] shirt until he was safely on the ground. PO Gerber denied taking any additional actions against Mr. J [REDACTED]. PO Gerber pushed Mr. J [REDACTED] to create space between them and denied that Mr. J [REDACTED] fall to the ground was intentional (Board Review 06).

PO Ortiz testified that PO Gerber ordered Mr. J [REDACTED] to sit down approximately four times, but Mr. J [REDACTED] remained standing, and paced back and forth. PO Ortiz observed PO Gerber holding onto Mr. J [REDACTED] shirt; however, PO Ortiz shifted his attention between Mr. C [REDACTED] and Mr. [REDACTED] and denied observing how Mr. J [REDACTED] ended up on the ground. PO Ortiz denied observing PO Gerber trip Mr. J [REDACTED] or take actions against Mr. J [REDACTED] beyond pulling on his shirt (Board Review 07).

On July 1, 2017, Mr. J [REDACTED] received treatment at Metropolitan Hospital in Manhattan, and on July 17, 2017, he received treatment at Mt. Sinai Hospital in Manhattan. During both visits, he reported pain to his legs, arms, knees, and ankles, which he attributed to an assault by the police. Both medical records confirm that swelling, bruising, and tenderness was found at the sites of these reported injuries and that Mr. J [REDACTED] could not bear weight on his left leg. On July 1, 2017, Mr. J [REDACTED] was discharged and prescribed Tylenol and Robaxin, a muscle relaxant. On July 17, 2017, Mr. J [REDACTED] requested prescription painkillers rather than over-the-counter medication, and when his request was denied, he left the hospital (see privileged medical documents).

Due to conflicting civilian and officer statements, and a lack of material evidence, the investigation was unable to determine what actions caused Mr. J [REDACTED] to end up on the ground. It is therefore recommended that **Allegation A** be closed as **unsubstantiated**.

Allegation B –Abuse of Authority: Police Officer Douglas Gerber issued a summons to

II [REDACTED]
Mr. J [REDACTED] and Mr. C [REDACTED] testified that they were seated next to each other when they were approached by PO Gerber and PO Ortiz, and there was a beer can on the ground within five feet of Mr. J [REDACTED]. Between their testimonies, it was corroborated that Mr. J [REDACTED] never touched this beer can, as it did not belong to him. The first time both Mr. J [REDACTED] and Mr. C [REDACTED] even noticed the beer can was when PO Gerber pointed it out.

PO Gerber testified that he first observed Mr. J [REDACTED] from 15-20 feet away, seated on a bench with an open 24-ounce beer can in a brown paper bag on the ground next to him. Mr. C [REDACTED] stood 15-20 feet away from Mr. J [REDACTED]. PO Gerber testified that he made the decision to stop Mr. J [REDACTED] with the intention of issuing him a summons for this open container. After PO Gerber stopped Mr. J [REDACTED] collected his identification, and began issuing him the summons, Mr. J [REDACTED] allegedly lifted the can off the ground and drank from it. PO Gerber ultimately issued Mr. J [REDACTED] a summons for an open container. Aside from observing the beer can on the ground next to Mr. J [REDACTED] until he allegedly drank from it, there was no other indication that the beer belonged to Mr. J [REDACTED]. PO Gerber did not believe the beer can belonged to Mr. C [REDACTED] due to him being further from the beer than Mr. J [REDACTED].

The summons PO Gerber issued Mr. J [REDACTED] for allegedly violating New York City Administrative Code, Section 10-125 (b) documents that PO Gerber saw Mr. J [REDACTED] “drinking a 12-ounce Pilsner beer can on a public sidewalk” (Board Review 08).

PO Ortiz testified that he observed Mr. J [REDACTED] after PO Gerber pointed him out. PO Ortiz observed Mr. J [REDACTED] approximately 30 feet away, holding a beer can, seated next to Mr. Carrasco. PO Gerber made the decision to stop Mr. J [REDACTED] and he and PO Ortiz exited the vehicle with the intention of issuing him a summons for the open container, although PO Ortiz did not observe that it was open until he was eight feet from Mr. J [REDACTED]. PO Gerber and Mr. J [REDACTED] had a brief exchange regarding the alleged violation, during which Mr. J [REDACTED] beer can moved from his hand to the ground. PO Ortiz was unable to articulate exactly how it ended up on the ground, or how far from Mr. J [REDACTED] the beer can was (Board Review 07).

PO Ortiz’s testimony that Mr. J [REDACTED] was holding the beer when he was initially observed was contradicted by the testimonies of PO Gerber, Mr. J [REDACTED] and Mr. C [REDACTED]. PO Gerber testified that the beer was on the ground next to Mr. J [REDACTED] until he allegedly drank from it, which was not until after Mr. J [REDACTED] was approached. Mr. J [REDACTED] and Mr. C [REDACTED] testified that Mr. J [REDACTED] did not drink from the beer can at any point, and it did not belong to either of them. Additionally, PO Ortiz could not articulate how the beer can moved from Mr. J [REDACTED] hand to the ground, which lends credence to the fact that the beer was on the ground when Mr. J [REDACTED] was initially observed, and was not in Mr. J [REDACTED] possession. Given this, the investigation does not credit PO Ortiz’s testimony that Mr. J [REDACTED] was holding the beer can before officers approached.

PO Gerber's verbal testimony and summons narrative that Mr. J [REDACTED] drank from the beer can was contradicted by the corroborated testimonies of Mr. J [REDACTED], Mr. C [REDACTED], and PO Ortiz, who testified that Mr. J [REDACTED] never drank the beer. Given this, the investigation does not credit PO Gerber's testimony that Mr. J [REDACTED] drank the beer at any point of the incident.

An officer may issue a summons when a person possesses an open container of alcohol with the intent to consume it in a public place. New York City Administrative Code, Section 10-125 (b) (Board Review 09). "Possess" means to have physical possession or otherwise to exercise dominion or control over tangible property. New York State Penal Law, Section 10-00 (8) (Board Review 11).

Given that Mr. J [REDACTED] was never observed in possession of the open container, he was not in violation of the cited offense. Given this, it is therefore recommended that **Allegation B** be closed as **substantiated**.

Squad: 10

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date